



**FOUR-YEAR PROGRESS REPORT ON  
THE SUFFOLK COUNTY  
GUN PRIORITY DISPOSITION SESSION**

**“Gun Court: Swifter Justice for Safer Streets”**

Feb. 21, 2006 – Feb. 21, 2010

Office of the Suffolk County District Attorney  
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## I. HIGHLIGHTS

- Suffolk County District Attorney Daniel F. Conley's established goal of prosecuting all Gun Court firearm cases in under 180 days has been exceeded for four straight years, averaging just 158 days over the life of the project.
- The Gun Court overall conviction rate (all gun charges as well as related charges arising out of the same incident such as domestic violence, drug offenses, etc.). was 89% in 2009. It has risen each year since Gun Court's 2006 inception and has averaged 85% over its four-year history.
- From 2008 to 2009 the number of firearm cases charged in the Gun Court and later indicted to Superior or Federal Court increased 26%, from 121 to 153. In 2009, 38% of all firearm cases charged in the Gun Court were subsequently indicted to Superior or Federal Court.<sup>1</sup>
- Policy makers should note that the number and percentage of firearm cases in Gun Court that do not carry a minimum mandatory sentence has increased each year. In 2006, 18% of the defendants convicted of a firearm offense were convicted under Ch. 269, Sect. 10(h), or other statutes with sentences can range from probation to committed time. In 2009, that figure more than doubled to 43%.
- Beginning in 2008, Gun Court was the site of first-in-the nation firearms convictions based in part on thermal imaging technology. After members of the Gun Prosecution Task Force developed Massachusetts Institute of Technology doctoral fellows in thermodynamics and related fields as certified expert witnesses, they were able to use images from a heat-seeking device to link discarded firearms to the suspects who had carried the guns and transferred their body heat to them.
- In late 2007, District Attorney Conley and Chief Justice Charles R. Johnson of the Boston Municipal Court Department expanded the Gun Court, directing almost all of Boston's firearm cases into it. Despite its increased caseload and with no additional staff, the result was a decline in the average duration of a firearm case from 365 days or more in 2006 to 146 days in 2009.
- Since 2006, 16 firearm suppression orders were appealed by Gun Court appellate lawyers. Of the 12 already decided, 10 have seen the suppression order reversed – a success rate of 83%.<sup>2</sup> In bringing these guns back into evidence, these appellate victories set the stage for trials or guilty pleas. Two additional decisions are still pending in Massachusetts' higher courts.

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<sup>1</sup> Most firearm cases prior to 2008 were indicted from their district courts of origin, rather than from the Gun Court, so figures for accurate comparison to 2008 and 2009 are not available.

<sup>2</sup> There were 2 additional appeals in 2006 that are not counted here. These appeals were dismissed due to the murder of the defendant.



## II. HISTORY

Conceived in 2005 by Suffolk County District Attorney Daniel F. Conley, the Suffolk County Firearms Priority Disposition Session, or “Gun Court,” is a specialized set of court proceedings dedicated to cases of firearms possession and collateral offenses. Defendants arrested on gun charges – as well as other charges such as drugs, assault-related offenses, or other crimes arising out of the same incident – are arraigned in the district court with jurisdiction and then have their cases routed to Gun Court sessions in the Central Division of the Boston Municipal Court Department.

District Attorney Conley conceived of the Gun Court after hearing from neighborhood residents who were not only concerned with escalating gun violence, but who also perceived a revolving door of justice through which those arrested for illegal gun possession were often back on the streets after posting relatively low bail while awaiting resolution of their cases. At the time, most gun cases took about a year – and often more – to resolve, a fact that undermined public confidence in the criminal justice system.

It was with this in mind that District Attorney Conley first approached Chief Justice Charles Johnson of the Boston Municipal Court Department with a plan to streamline and centralize the prosecution of gun possession offenses. The top priorities were to eliminate the large backlog of gun cases in the Dorchester and Roxbury divisions of the BMC and to reduce the period from arraignment to disposition by at least half, or to no more than 180 days. Dorchester and Roxbury courts were selected because they accounted for more gun cases than Suffolk County’s other seven district courts combined.

Achieving these ambitious goals required more than agreement between the District Attorney and the Trial Court, however. It required the close collaboration and cooperation of the Boston Police Department, whose officers were doing the dangerous work of taking illegal guns and those who carry them off the streets. District Attorney Conley approached then-Commissioner of Boston Police Kathleen O’Toole, who endorsed the idea. Later that same year, Edward Davis was appointed Boston Police Commissioner and the Gun Court has enjoyed his strong support ever since.

On Feb. 21, 2006, the first Gun Court session was held in the Central Division of the BMC. It was staffed by a team of four experienced district court prosecutors and one appellate prosecutor – the newly-created Gun Prosecution Task Force. During their first day in the new session, they handled four defendants’ cases; two of those defendants pleaded guilty that day, one as his trial was about to start and the other after his motion to suppress evidence was denied. Both received mandatory jail terms.

In late 2007, when it became apparent that the session was exceeding all expectations, District Attorney Conley and Chief Justice Johnson expanded the pool of district courts that would send cases to Gun Court. At the same time, prosecutors began to re-route those cases immediately after arraignment, rather than after the pre-trial

hearing date. As a result, gun cases from the Dorchester, Roxbury, Charlestown, East Boston, South Boston, and Central divisions of the BMC are now routed to Gun Court for all intermediate court dates. And because they no longer compete for courtroom time with the tens of thousands of other cases resolved in district court each year – many of them much less serious – they can be resolved much more rapidly.

Beginning in 2008, members of the Gun Prosecution Task Force became the first in the nation to win firearms convictions based in part on thermal imaging technology. After developing doctoral fellows from the Massachusetts Institute of Technology as certified expert witnesses in the field of heat transfer, they introduced as evidence images from the Bullard TI Commander, a thermal imaging device purchased by Boston Police that records heat the way a conventional camera records light. Gun Court prosecutors were able to link defendants to discarded weapons through the weapons' residual heat signatures. Because a metal object carried by a person retains heat, a recently-discarded firearm – such as one tossed by a fleeing suspect – will appear lighter than its surroundings in the Bullard's thermal image. In 2009, in the first-ever jury trial using that evidence<sup>3</sup>, Gun Court prosecutors demonstrated that a firearm recovered from a suspect's path of flight still retained the suspect's body heat, contrasting with the snowy back yard in which it was found.

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<sup>3</sup> *Commonwealth v. Jose E. Rodrigues*



### III. RESULTS

Between 2004 and 2005, the City of Boston saw a marked increase in gun violence. Every category employed by the Boston Police Department to keep statistical track of firearm related offenses showed marked increases in that one year period. Total violent firearm offenses increased from 1,155 in 2004 to 1,474 in 2005. Non-fatal shootings increased from 218 to 290 in this same period and firearms related arrests rose from 391 to 576.

Four years later, in 2009, gun violence in Boston has declined dramatically. Non-fatal shootings had fallen to 227 – a 22% decline – while firearm-related arrests, which peaked at 678 in 2007, reduced to 573 in 2009. The number of homicides committed with a firearm has fallen each year since 2006, from 55 that year to 34 in 2009, a reduction of 38%.<sup>4</sup>

These remarkable improvements cannot be attributed to any single factor. Concerted and combined efforts to reduce violence, however – redoubled by prosecutors, police, and city, state, and community leaders in the months and years following the disturbing spike – have unquestionably paid off. These efforts included smart and focused police work; landmark legislation that gave new tools to law enforcement; new resources for community based anti-violence innovation; and efforts to strengthen and refocus existing partnerships and approaches. They also included some entirely new strategies never before employed in Boston. Chief among them was the introduction of Massachusetts' first Gun Priority Disposition Session, popularly known as the "Gun Court."

District Attorney Conley conceived of Gun Court with two specific goals in mind: First, to eliminate the backlog of more than 100 pending cases in the Dorchester and Roxbury courts, and second, to reduce the average duration of a gun case from a year or more to six months or less.

Members of the Gun Prosecution Task Force met their first goal quickly. In Gun Court's first 177 working days, the GPTF prosecuted and disposed of 226 gun cases. Of those cases, 136 were cases that had been sitting in the system since 2005, 2004, or even earlier.

The second goal, to reduce the average time from arrest to disposition, was not merely met, but exceeded. Throughout the four-year life of the Gun Court, the time from arraignment to disposition has remained below the 180-day target. In 2009, the average time from arraignment to disposition in the Gun Court stood at 146 days.

The overall conviction rate for Gun Court cases has steadily improved since the session's inception. By the end of its first year, the Gun Prosecution Task Force had secured an overall conviction rate of 80%. In 2009, the overall conviction rate rose to

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<sup>4</sup> Statistics provided by the Boston Police Department's Boston Regional Intelligence Center (BRIC)

89%. Over the four-year life of the Gun Court, 1,255 cases have been prosecuted and disposed with an average overall conviction rate of 85%.

In this same period, appellate prosecutors assigned to the Gun Court have strengthened the Gun Prosecution Task Force's cases and brought back before the court cases that might otherwise have been dismissed. If a defendant's motion to suppress a firearm from evidence is allowed, it's usually due to a Constitutional defect in the search and seizure of the firearm. The firearm is excluded and it is impossible for the Commonwealth to proceed to trial. On the other hand, if the motion to suppress is denied and the evidence is allowed, the likelihood that the defendant will be found guilty increases dramatically and thus often results in a change of plea. Successfully appealing an erroneous suppression order can put a gun back into evidence and many times guarantee a conviction in a case that would otherwise have been dismissed.

In its first four years, Gun Court has cleared an enormous backlog of years-old pending gun cases, reduced by more than half the time it takes to resolve the average gun case, and streamlined firearms prosecutions while achieving an overall conviction rate that approaches 90%. Gun Court has revolutionized the way gun crimes are addressed in Boston and has undoubtedly played a part in the reduction of gun violence during the past four years.



#### **IV. THE STORY OF GUN COURT IN ONE CASE** **Arrest, Suppression, Appeal, Conviction**

Alander Gooden's recent conviction and jail sentence in the Boston Municipal Court's Gun Priority Disposition Sessions – popularly known as Gun Court – tells the story of a criminal justice initiative that has revolutionized the way firearm offenses are prosecuted in Boston.

Gooden is one of more than 300 defendants who have been sentenced to a mandatory term of incarceration for carrying an unlicensed, illegal firearm in public since the first Gun Court sessions on February 26, 2006. The minimum mandatory sentence was increased in March 2006 from one year to eighteen months; many defendants have been sentenced to periods of jail time longer than the minimum mandatory term. About 150 additional defendants have been sentenced to jail time or probation for unlicensed, illegal possession of firearms within their residences or places of work during the same time. In the past two years alone, almost 300 additional defendants have been indicted on gun charges in Suffolk Superior or Federal court, where they face even harsher potential penalties.

Since the Gun Priority Disposition Session's inception, the time it takes to bring a gun defendant to trial has been reduced from a year or more to an average of 146 days last year – exceeding District Attorney Conley's goal of reducing the length of the average gun possession case to six months or less. Because the court initially suppressed Gooden's gun from evidence, his case is an exception to the Gun Court's average disposition time, but not to its success rate – trial prosecutors have obtained convictions in 86% of their cases and their appellate counterparts have prevailed in ten out of twelve Gun Court appeals decided between 2006 and 2009. There are two additional Gun Court cases still pending decision in the state's higher courts.

In the Gooden case, Boston Police officers and a Massachusetts State trooper approached Gooden on the evening of June 2, 2007, after watching him crawl out of a parked Toyota with a revoked registration on Baker Avenue in Dorchester. Nervous and sweating, Gooden told the assembled police that he had not been in the Toyota, that he had been lying on the sidewalk the whole time, and that the vehicle belonged to his girlfriend.

Because the car's registration had been revoked, the officers made arrangements to have it towed. In the course of an inventory search, one of the officers – who had attended a US Drug Enforcement Administration course on motor vehicle "hides" or hidden compartments – observed that the plastic frame around the gear shift was loose. He lifted the frame and recovered a handgun, later determined to be a Walther PPK semiautomatic pistol loaded with six rounds in the magazine and a seventh in the chamber, ready to be fired.

Gooden was arrested at the scene and arraigned the following Monday in the Roxbury Division of the Boston Municipal Court. In keeping with District Attorney



Conley's policy with respect to firearms, the prosecutor on the case sought an appropriately high bail and Gooden was held on \$15,000. As a defendant charged with illegal possession of a firearm, his case was routed to the Central Division of the Boston Municipal Court Department for subsequent dates in Gun Court.

On Nov. 6, 2007, after an evidentiary hearing on the defendant's motion to suppress the police seizure of the gun as a violation of his constitutional rights, a judge ruled that Gooden had a reasonable expectation of privacy in the Toyota – which was not his, and which he claimed not to have occupied – and that the loaded handgun would not be admissible as evidence.

Gun Court prosecutors assigned to Conley's Appeals Division filed a notice of appeal that same day. On June 24, 2009, the Massachusetts Appeals Court reversed the judge's ruling as being in error and found that the gun should indeed be admitted into evidence at Gooden's trial.

"[T]he motion judge made no findings of fact to support the conclusion that the defendant had an objectively reasonable expectation of privacy in the interior of the vehicle, where the firearm was found," the Appeals Court wrote. "Accordingly, the order allowing the motion to suppress is vacated, and the case is remanded for further proceedings."

Gooden's subsequent appeal to the state's Supreme Judicial Court was rejected. The case was finally marked for trial in the Central Division of the Boston Municipal Court last month. In addition to calling the arresting officers and Boston Police ballistics, Assistant District Attorney Benjamin Goldberger of the Gun Prosecution Task Force introduced the testimony of the former Boston Police criminalist who had matched Gooden's fingerprints with a print recovered from the bottom part of the gear shift frame. That portion of the frame – which covered the Walther PPK where police recovered it – is not exposed or accessible unless someone was to pry it up.

Goldberger argued that the only way Gooden's fingerprint could have been left on that portion of the gear shift frame would be in placing the firearm beneath it. The jury agreed and on Feb. 24 convicted Gooden of unlawful possession of a firearm. Goldberger recommended a 2½-year jail term; the presiding judge sentenced Gooden to 2½ years with 18 months committed and the balance suspended until August 2013.

While the Commonwealth's appeal of the lower court's suppression of the gun was pending, Gooden was arrested again, this time for trafficking cocaine in a school zone. He was subsequently indicted by a Suffolk County grand jury and faces a potential 20-year sentence.

## V. STATISTICAL TABLES

Average days from arraignment to disposition: (Gun Court goal of under 180 days)

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>4-yr. avg.</u>
144	177	166	146	158

Number of cases disposed (includes all cases prosecuted, dismissed to indictment, or otherwise disposed. See attached complete breakdowns by year.):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
295	166	389	405	1,255

Number of Cases Viable for Prosecution in Gun Court:

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
213	106	187	170	676

Number of Overall Gun Court Convictions (includes all firearm and non-firearm related offenses including domestic violence, drug offenses, etc.):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
170	88	161	151	570

Gun Court Overall Conviction Rate (includes all firearm and non-firearm offenses such as domestic violence, drug offenses, etc.):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>4-yr. avg.</u>
80%	83%	86%	89%	85%

Number of Gun Court firearm convictions (all defendants convicted under Ch. 269 s. 10(a), (h), and other firearms statutes):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
142	72	122	122	458

Gun Court Firearm Conviction Rate:

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>4-yr. avg.</u>
66%	68%	65%	72%	68%

Number of defendants convicted under Ch. 269 s. 10(a) (minimum mandatory 1 year prior to March 30, 2006; 18 months after):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
117	51	77	70	315

Number of defendants convicted under Ch. 269 s. 10(h) or other firearms statute (no minimum mandatory sentence under the law; sentences range from probation to committed time):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
25	21	45	52	143

Percentage of defendants convicted of a firearm offense that does not apply a minimum mandatory sentence (sentences range from probation to committed time):

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>4-yr. avg.</u>
18%	29%	37%	43%	32%

Number of firearm cases indicted to Superior or Federal Court<sup>5</sup>:

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
N/A	N/A	121	153	274

Percentage of firearm cases indicted to Superior or Federal Court:

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2-yr. avg.</u>
N/A	N/A	31%	38%	34.5%

Gun Suppression Motions Allowed; No Viable Appeal Possible:

<u>2006</u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
14	10	18	10	52

Gun Suppression Motions Allowed; Appeal Taken:

<u>2006<sup>6</sup></u>	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>Total</u>
8	3	1	4	16

Gun Suppression Motions Allowed; Appeal Taken, Suppression Order Reversed:

<u>2006</u>	<u>2007<sup>7</sup></u>	<u>2008</u>	<u>2009<sup>8</sup></u>	<u>% Total<sup>9</sup></u>
6	2	1	1	83%

<sup>5</sup> 2008: 121 cases arising out of the Gun Court indicted to Superior Court, 10 indicted to Federal Court; 2009: 138 cases arising out of the Gun Court indicted to Superior Court, 15 indicted to Federal Court. Most firearm cases prior to 2008 were indicted from their district courts of origin, as opposed to centralized and arising out of the Gun Court, so figures for accurate comparison to 2008 and 2009 figures are not available.

<sup>6</sup> There were 2 additional appeals in 2006 that are not counted here. These appeals were dismissed due to the murder of the defendant.

<sup>7</sup> In all 3 cases from 2007 the suppression order was reversed but 1 one the case is on for further review.

<sup>8</sup> Appeals pending on 3 cases.

<sup>9</sup> Only those cases already decided are factored into the final percentages.



## VI. YEAR-BY-YEAR ANALYSIS

### Notes for reviewing firearm statistics:

1. Indictment numbers reflect any case charged in Gun Court and subsequently indicted into Suffolk Superior Court in which a charge involving a firearm is entered. These statistics do not reflect cases where a firearm may have been used but no charge was made. (An example of this might include a case of armed robbery where a witness testifies that the robbery occurred at gunpoint, but no weapon was ever recovered and a firearm charge could not attach.) All of the cases counted constitute a defendant charged with a specific firearm offense, either singly or as part of a larger indictment.
2. The overwhelming majority of firearm cases that survive a motion to suppress end in a guilty plea. If the motion to suppress is allowed it is usually due to a Constitutional defect in the search and seizure of the firearm: the firearm is excluded and it is impossible for the Commonwealth to proceed to trial. On the other hand, if the motion to suppress is denied and the evidence is allowed, the likelihood that the defendant will seek a change of plea increases dramatically.
3. As with any other offense, the gun cases that actually proceed to trial are typically the most difficult cases to prove. Those cases often reflect a scenario in which the firearm is allowed into evidence but there remains a question of who possessed it – i.e., a gun is tossed from a vehicle or from a group of individuals, or a firearm is found in the console of a car or in the vicinity of the defendant(s) but ownership is contested.
4. There are three primary reasons that the Commonwealth would file a *Nolle prosequi* or dismiss a firearm charge:
  - a) When, as a matter of law, there is insufficient evidence to sustain the Commonwealth's burden of proof at trial beyond a reasonable doubt;
  - b) When a motion to suppress the seized firearm is allowed and the Commonwealth cannot go forward absent the firearm (these have counted against the adjusted conviction rate); and
  - c) When a co-defendant takes responsibility for the seized firearm via a change of plea and no independent indicia exists to prove illegal possession of the firearm by any co-defendant(s). (In these instances, the dismissal or *Nolle prosequi* is not counted against the Commonwealth's adjusted conviction rate.)
5. There is an important public benefit to the prosecution of all gun cases, including those that result in a not guilty verdict: the weapon itself is removed from the streets permanently.

### **2009 Breakdown of Active Cases Disposed in the Gun Court**

There were 405 cases disposed in the Gun Court in 2009. Of those 405 cases, 235 were disposed of as follows:

**Dismissed to Superior Court indictment:** 138 cases

***Nolle Prosequi* entered:** 62 cases (defendants and co-defendants combined) with the numbers broken down as follows:

- 25 cases where as a matter of law there was insufficient evidence to sustain the Commonwealth's burden of proof at trial beyond a reasonable doubt. (For example, cases where multiple persons were arrested in a motor vehicle as a result of a firearm being recovered but where there was no forensic or other evidence linking the firearm to one or more of the persons arrested);
- 18 cases where the *Nolle prosequi* was entered by, or at the direction of, a Superior Court prosecutor. Of this number, 5 were indicted in Superior Court; 8 were for insufficient evidence; 1 was pursuant to a cooperation agreement; and 4 were related to a Superior Court prosecution;
- 15 cases where the defendant was federally indicted or surrendered to a federal probation detainer;
- 2 cases where other defendants were found guilty and/or took responsibility for the firearms and no independent probable cause existed to proceed against the remaining defendants;
- 1 case was pursuant to a cooperation agreement; and
- 1 case was due to concerns for the safety of a civilian witness.

**Dismissed without prejudice:** 20 cases (18 fact patterns) with the numbers broken down as follows:

- 6 cases where the civilian witnesses necessary to prove the case were uncooperative;
- 5 cases where the firearm was determined to be inoperable;
- 4 cases where the drugs recovered were found to contain no narcotic substance (these were co-defendants not charged with a firearm);
- 2 cases where the defendant died prior to trial;
- 1 case where the firearm and ballistics analyses were unable to be located (a case from 1987 with the MDC Police in which the defendant had been in default since 1988);
- 1 case dismissed where the Boston Police were unable to locate paperwork pursuant to a court order and the matter was dismissed over the Commonwealth's objection; and
- 1 case where duplicative charges were issued by the transferring court.



**Gun Court suppression motions allowed; No viable appeal possible:** 15 cases. These motions involved cases where it was determined after review of the court's rulings of law and findings of fact that there was insufficient legal basis to warrant an appeal.

**Gun Court suppression motions allowed; appeal taken:** In 2009 appeals were taken on 3 cases in the Gun Court in which suppression motions were allowed. Of this number, 1 suppression orders was reversed and 2 appeals are now pending.

**That left 170 viable cases for prosecution in the Gun Court in 2009.** Of these viable cases, 151 resulted in a conviction with the following breakdown:

- **122 resulted in a conviction for a firearm related offense.** Of this number:
  - 70 resulted in a conviction under Ch.269 § 10(a) and the defendants received a committed sentence of at least 18 months;
  - 52 resulted in a conviction under Ch. 269 § 10(h) or some other firearms statute for which the defendants received sentences ranging from probation to committed time.
- 29 additional cases resulted in convictions for various non-firearm offenses. This includes convictions for charges alleging crimes of violence, narcotics or motor vehicle offenses for which the defendants received sentences ranging from probation to committed time.
- 19 cases ended in acquittals

**In 2009, the average of the duration of cases disposed of in the Gun Court was 146 days.** This number excludes cases where there were delays beyond the Commonwealth's control (e.g. the defendant defaulted, defense counsel missed one or more court dates, the Court delayed issuing a suppression decision).

### **2009 Active Cases Remaining**

As of December 31, 2009, there were 168 active cases pending in Gun Court, including new arrests, cases scheduled for probable cause pending subsequent indictment, and active GPTF cases. Of these 168, 36 cases were scheduled for probable cause, leaving 132 cases that are likely to be prosecuted to a resolution in Gun Court.



### **2008 Breakdown of Active Cases Disposed in the Gun Court**

There were 389 cases disposed in the Gun Court in 2008. Of those 389 cases, 202 were disposed of as follows:

**Dismissed to Superior Court indictment:** 111

***Nolle Prosequi* entered:** 58 cases (Defendants and co-defendants combined) with the numbers broken down as follows:

- 29 cases where as a matter of law there was insufficient evidence to sustain the Commonwealth's burden of proof at trial beyond a reasonable doubt;
- 12 cases where the *Nolle prosequi* was entered by, or at the request of, a Superior Court ADA (of this number, 6 were for reasons relating to the prosecution of the case in Superior Court and 6 were because the defendant had been indicted in Superior Court);
- 10 cases where the defendant was federally indicted and the *Nolle prosequi* was entered to have the defendant held on the federal charges;
- 3 cases where other defendants were found guilty and/or took responsibility for the firearms and no independent probable cause existed to proceed against the remaining defendants;
- 2 cases where the *Nolle prosequi* was entered mid-way through the suppression motion hearing in order to protect the identity of a confidential informant;
- 1 case where an elderly defendant whose license to carry had expired in 1999 and was not renewed (defendant had no record and facts surrounding the incident led to entry of the NP); and
- 1 case due to safety concerns arising from proffer of co-defendant.

**Dismissed without prejudice:** 8 cases with the numbers broken down as follows:

This number breaks out as follows:

- 4 cases where civilian witnesses were necessary to prove the case and they refused to cooperate;
- 1 case where the defendant died prior to trial;
- 1 case where the firearm was inoperable;
- 1 case where there was no firearm or ballistics evidence recovered (defendant charged under 269 § 10(a), and assault dangerous weapon (gun) – victim refused to cooperate); and
- 1 case where the charge (operating a motor vehicle after suspension of license) was dismissed in consideration of the plea on the underlying firearms case.

**Gun Court suppression motions allowed; no appeal taken:** 25 cases. These motions involved cases where it was determined after review of the court's rulings of law and findings of fact that there was insufficient legal basis to warrant an appeal.

**Gun Court suppression motions allowed; appeal taken:** In 2008 appeals were taken on 1 case in the Gun Court in which a suppression motion was allowed. This suppression order was reversed.

**That left 187 viable cases for prosecution in the Gun Court in 2008.** Of these viable cases, 161 resulted in a conviction with the following breakdown:

- **122 resulted in a conviction for a firearm related offense.** Of this number:
  - 77 resulted in a conviction under Ch.269 § 10(a) and the defendants received a committed sentence of at least 18 months (minimum mandatory);
  - 45 resulted in a conviction under Ch. 269 § 10(h) or some other firearms statute for which the defendants received sentences ranging from probation to committed time.
- 39 additional cases resulted in convictions for various non-firearm offenses. This includes convictions for charges alleging crimes of violence, narcotics, and motor vehicle offenses for which the defendants received sentences ranging from probation to committed time.
- 26 cases ended with acquittals.

**In 2008, the average of the duration of cases disposed of in the Gun Court was 166 days.** This number excludes cases where there were delays beyond the Commonwealth's control (e.g. the defendant defaulted, defense counsel missed one or more court dates, the Court delayed issuing a suppression decision).

### **2007 Breakdown of Active Cases Disposed in the Gun Court**

There were 166 cases disposed in the Gun Court in 2007. Of those 166 cases, 60 were disposed of as follows:

**Dismissed to Superior Court indictment:** 16 cases<sup>10</sup>

***Nolle Prosequi* entered:** 16 cases (defendants and co-defendants combined) with the numbers broken down as follows:

- 7 cases where there was insufficient evidence or because the firearm was not operable;
- 6 cases where other defendants were found guilty and/or took responsibility for the firearms and no independent probable cause existed to proceed against the remaining defendants;
- 1 case where a co-defendant was tried (and acquitted) and the defendant was expected to serve a 10-year federal sentence;
- 1 case where the defendant was federally indicted;
- 1 case due to an existing federal grand jury investigation.

**Dismissed without prejudice:** 14 cases with the numbers broken down as follows:

- 4 motions to dismiss allowed by a judge (for lack of probable cause or similar issues)
- 5 cases dismissed without prejudice because a civilian witness was not cooperating or did not appear
- 1 case dismissed without prejudice because of Rule 36 issues (the case was 17 years old and the defendant was in custody during much of that time)
- 1 case dismissed without prejudice because of police officers failing to appear
- 1 case dismissed without prejudice because of police failing to provide discovery prior to trial
- 2 cases dismissed without prejudice because of discovery problems which forced the Commonwealth to answer not ready

**Gun Court suppression motions allowed; No viable appeal possible:** 14 cases. These motions involved cases where it was determined after review of the court's rulings of law and findings of fact that there was insufficient legal basis to warrant an appeal.

**Gun Court suppression motions allowed; appeal taken:** In 2007 appeals were taken on 3 cases in the Gun Court in which suppression motions were allowed. All three of these suppression orders were reversed.<sup>11</sup>

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<sup>10</sup> Most firearm cases prior to 2008 were indicted from their district courts of origin, as opposed to centralized and arising out of the Gun Court.

<sup>11</sup> 1 case where the suppression order was reversed is on further review.



**That left 106 viable cases for prosecution in the Gun Court in 2007.** Of these viable cases, 88 resulted in a conviction with the following breakdown:

- **72 cases resulted in a conviction for a gun offense.** Those cases are broken down as follows:
  - 51 resulted in a conviction under Ch.269 § 10(a) and the defendants received a committed sentence of at least 1 year or 18 months (minimum mandatory);
  - 21 resulted in a conviction under Ch. 269 § 10(h) or some other firearms statute for which the defendants received sentences ranging from probation to committed time.
- 16 resulted in convictions for various non-firearm offenses. This includes convictions for charges alleging crimes of violence, narcotics or motor vehicle offenses for which the defendants received sentences ranging from probation to committed time.
- 18 cases ended in acquittals.

**In 2007, the average of the duration of cases disposed of in the Gun Court was 177 days.** This number excludes cases where there were delays beyond the Commonwealth's control (e.g. the defendant defaulted, defense counsel missed one or more court dates, the Court delayed issuing a suppression decision).

### **2006 Breakdown of Active Cases Disposed in the Gun Court**

There were 295 cases disposed in the Gun Court in 2006, including a significant backlog of cases arising out of the Dorchester and Roxbury Court Divisions. The 295 cases disposed in 2006 eliminated this back and are broken down by year of origin as follows:

2006:	151 cases
2005:	124 cases
2004 or before:	20 cases

**Dismissed to Superior Court indictment:** 34 cases<sup>12</sup>

***Nolle Prosequi* entered:** 37 cases (defendants and co-defendants combined) with the numbers broken down as follows:

- 21 cases where there was a lack of probable cause to proceed to trial;
- 11 cases where other defendants were found guilty and/or took responsibility for the firearms and no independent probable cause existed to proceed against the remaining defendants;
- 3 cases where the firearm was inoperable;
- 1 case where a defendant testified untruthfully under oath in the Grand Jury rendering the Commonwealth unable to indict and to meet its burden in any proceeding thereafter; and
- 1 case where the defendant was being indicted on the same charge in conjunction with pending drug charges (so it was essentially dismissed to a subsequent indictment.)

**Dismissed without prejudice:** 11 cases, with the numbers broken down as follows:

- 5 cases where the necessary witness/victim failed to appear (2 victim cases where the victim refused to cooperate with the Commonwealth);
- 3 cases where the defendant was murdered during the pendency of appeal;
- 1 case due to an ongoing investigation;
- 1 case where police failed to provide necessary discovery; and
- 1 case as a matter of law under Ch. 123 s. 16 where the defendant had served over half of the maximum allowable sentence under law at Bridgewater State Hospital and had significant mental health issues that prevented him from standing trial.

**Gun Court Suppression Motions Allowed; No Viable Appeal Possible:** 14 cases. These motions involved cases where it was determined after review of the court's rulings of law and findings of fact that there was insufficient legal basis to warrant an appeal.

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<sup>12</sup> Most firearm cases prior to 2008 were indicted from their district courts of origin, as opposed to centralized and arising out of the Gun Court.

**Gun Court Suppression Motions Allowed; Appeal Taken:** In 2006 appeals were taken on 10 cases in the Gun Court in which suppression motions were allowed. Of this number, 2 cases were dismissed due to the murder of the defendant, leaving a total of 8 cases appealed. Of this number, 6 suppression orders were reversed.

**That left 213 viable cases for prosecution in the Gun Court in 2006.** Of these viable cases, 170 resulted in a conviction with the following breakdown:

- **142 resulted in a conviction for a firearm related offense.** Of this number:
  - 117 resulted in a conviction under c.269 § 10(a) and the defendants received a committed sentence of a minimum of at least either 1 year or 18 months (minimum mandatory);
  - 25 resulted in a conviction under c. 269 § 10(h) or some other firearms statute for which the defendants received sentences ranging from probation to committed time.
- 28 resulted in convictions for various non-firearm offenses. This includes convictions for charges alleging crimes of violence, narcotics or motor vehicle offenses for which the defendants received sentences ranging from probation to committed time.
- 20 cases ended in an acquittal.

**In 2006, the average of the duration of cases disposed of in the Gun Court was 144 days.** This number excludes cases where there were delays beyond the Commonwealth's control (e.g. the defendant defaulted, defense counsel missed one or more court dates, the Court delayed issuing a suppression decision).